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stand vested in the grantee, subject to be defeated only by proof that the taxes or levies for which the land was sold were not properly chargeable thereon, that the taxes and levies properly chargeable had been paid, that notice of the application to purchase had not been duly given, or that payment or redemption of the land was prevented by fraud or concealment on the part of the purchaser; and the deed of such a purchaser may be attacked.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 151 et seq.]

Appeal from Corporation Court of Roanoke.

Bill by Janie White Dey and others against the Zimmerman Company, Incorporated, and others. From a decree for complainants, defendants appeal. Affirmed.

Hart & Hart and *Jno. Dabney Smith*, all of Roanoke, for appellants.

G. A. Wingfield, of Norfolk, and *Roy B. Smith*, of Roanoke, for appellees.

CLINCHFIELD COAL CORP. v. RAY.

Sept. 20, 1917.

[93 S. E. 601.]

1. Master and Servant (§ 206, 217 (1), 219 (1)*)—Assumption of Risk—Nature of Doctrine.—A servant assumes risk of dangers known to and appreciated by him, or ordinarily incident to the service, or open and obvious, which the law will infer are known to him.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 693, 694.]

2. Master and Servant (§ 217 (1)*)—Assumption of Risk—Changing Conditions.—The doctrine of assumed risk applies to changing conditions at the place of work of the servant, due to the progress of the work or to other operations of the master within the servant's view.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 694.]

3. Master and Servant (§ 226 (1)*)—Assumption of Risk—Dangerous Operations—Mining.—A miner did not assume risks caused by the master's negligent operation of mine cars, which, colliding with a derailed car around which plaintiff was working, caused his injury.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 699.]

4. Master and Servant (§ 103 (1)*)—Miner's Injury—Methods of Work.—It was a master's unassignable duty to exercise ordinary care to prevent mine cars coming into collision with cars around which plaintiff was working, and the master was liable for injuries

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

resulting from his negligence in not safeguarding plaintiff by placing signals or notifying servants operating such cars.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 668, 674.]

5. Master and Servant (§ 139*)—Miner's Injury—Proximate Cause.—Proximate cause of a miner's injury held to be the master's failure to guard him against mine cars, colliding with cars around which plaintiff was working.

[Ed. Note.—For other cases, 9 Va.-W. Va. Enc. Dig. 691.]

6. Master and Servant (§ 125 (1)*)—Servant's Injury—Master's Duty—Character of Service.—It is not from the difference in character of the employee's service that the master's non-assignable duty to care for employee's safety arises, but from the servant's situation and surrounding circumstances and the master's actual or constructive knowledge.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 680.]

7. Negligence (§ 82 (1)*)—Superseding Cause of Injury—What Constitutes.—A superseding cause of injury must entirely supersede the operation of defendant's negligence, so that such cause alone, without the defendant's negligence contributing in the slightest degree thereto, in fact produced the injury.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 374.]

8. Master and Servant (§ 139*)—Miner's Injury—Superseding Cause of Injury.—The fact that a derailed mine car, which plaintiff, engaged in repairing the track, was replacing, in order to continue his work, was the one which a mining train struck, injuring plaintiff, held not to be a superseding cause of injury, absolving defendant from negligent operation of train and guarding of the place of work.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 691.]

9. Master and Servant (§ 88 (4)*)—Miner's Injury—Relation of Parties—Volunteers.—A mine track repairer, temporarily engaged in replacing a derailed car, being a necessary operation to the carrying on of his repair work, held not to be a volunteer, so as to defeat master's liability for negligence.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 668.]

10. Appeal and Error (§ 999 (3)*)—Review—Conclusiveness of Verdict—Personal Injury Action.—In a miner's personal injury action, verdict held conclusive on questions of plaintiff's contributory negligence and whether defendant's servants could have anticipated collision, causing injury, where such questions of fact were submitted to the jury upon instructions full and fair and favorable to defendant.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 423.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Russell County.

Action by Fullen Ray against the Clinchfield Coal Corporation. Judgment for plaintiff, and defendant brings error. Affirmed.

E. M. Fulton, of Wise, *Burns & Kidd*, of Lebanon, and *Morison, Morison & Robertson*, of Big Stone Gap, for plaintiff in error.

Werth & Werth, of Norton, for defendant in error.

SHANKLE *v.* SPAHR.

Sept. 20, 1917.

[93 S. E. 605.]

1. Gifts (§ 53*)—Causa Mortis—Rules in General.—The rules of law on the subject of gifts causa mortis should not be relaxed or extended.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 729.]

2. Gifts (§ 16*)—Causa Mortis—Inter Vivos—Execution.—Only executed parol gifts, whether inter vivos or causa mortis, are valid.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 730.]

3. Gifts (§ 61, 62 (3)*)—Causa Mortis—Necessity of Delivery.—Delivery of possession of the subject of the gift by the donor in his lifetime is essential to the execution of a gift causa mortis.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 732.]

4. Gifts (§ 62 (1)*)—Causa Mortis—Necessity of Delivery.—The subject of the alleged gift, being gold coin not too ponderous for immediate delivery, delivery could not be dispensed with.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 732.]

5. Gifts (§ 622 (6)*)—Causa Mortis—Constructive Delivery.—To constitute constructive delivery, it is essential that there should be a physical delivery of some tangible object which may serve as the means of getting possession and enjoyment of the subject of the gift.

[Ed. Note.—For other cases, see 6 Va.-W. Va. Enc. Dig. 733.]

6. Wills (§ 90*)—Gift Causa Mortis Distinguished.—If the words of gift accompanying the delivery indicate an intention on the part of the donor not to confer on the donee the power to take physical possession of the thing until the donor's death then the proceeding is an abortive testamentary act and not a gift.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 709.]

7. Gifts (§ 82 (1)*)—Causa Mortis—Delivery—Evidence.—Acquiescence of a donor after words of donation in a previously acquired

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